

and respondent, the said Boyle should become tenant to respondent of said premises, in place of said Osborne, and an agreement, in writing, to that effect, was signed by said Boyle, since which time the said Osborne has ceased to have any interest whatever, in, or control over, or possession of, said premises; and at or about the same time, said Osborne assigned to him the policy of insurance on said property, which assignment was presented to the insurance office, but being rejected, this respondent, on the 3d day of April, 1845, and before the death of said Osborne, effected an insurance in his own name on said premises. That in further exercise of ownership over said property, respondent, as early as the 29th of August, 1844, discharged the mortgage of parcel of said premises, to John S. Darnell and others, mentioned in said conveyances, and obtained a release therefor. That, subsequently, Levi Benjamin, another mortgagee mentioned in said deeds, having obtained a decree for the sale of the premises mortgaged to him, a certain David Stewart, as trustee for Sarah Goldsmith, the wife of the respondent, purchased up said mortgage, and had the decree entered for his use as trustee as aforesaid; that this purchase was made to prevent a sale of, and for the protection of respondent's interest in said mortgaged premises.

He further states, that he is unable to state the particular times at which he made the loan to said Osborne, for security whereof, her promissory note for \$21,500 was given him. That at the time of his intermarriage with his present wife, Sarah Goldsmith, in or about the year 1832, said Osborne was indebted unto his said wife in a considerable sum of money. From that time to the 5th of November, 1842, numerous loans were made by defendant to said Osborne, and the said note represents the result of all the dealings between her and defendant, including the sum due his wife as aforesaid, up to said dates. Defendant avers that he has no books, or book of accounts. In making his loans to said Osborne, he sometimes took her note, at other times, he would make a loose memorandum thereof, and again he would suffer the loan to rest in the recollection of the parties. From time to time, settlements were had between the